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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

OAHU ISLAND BURIAL COUNCIL MEETING
MINUTES

DATE: WEDNESDAY, APRIL 12, 2006
TIME: 10:00 A.M.
PLACE: DEPARTMENT OF LAND & NATURAL RESOURCES
1151 PUNCHBOWL STREET, ROOM 132
HONOLULU, HAWAII 96813

ATTENDANCE:

Members: Jace McQuivey, Chair
Mark Kawika McKeague, Vice-Chair
Carolyn "Kehau" Abad
Van Horn Diamond
Charles Ehrhorn
Alice Greenwood
Kalei Kini
Kehaulani Kruse
Aaron Mahi
Linda Kaleo Paik
Lynette "Nettie" Tiffany

Absent: Cy Bridges (Excused)
Analu Josephides (Excused)
Andrew Keliikoa (Excused)

Staff: Piilani Chang, Oahu Cultural Historian
Vince Kanemoto, Deputy Attorney General
Chris Monahan, Oahu Archaeologist
Susan Yanos, Secretary

Guests: Alani Apio
Bill Brizee
Matt McDermott
Scott Brazwell
Doug Borthwick
Jeff Dinsmore
Pua Aiu

I. CALL TO ORDER & ROLL CALL

Meeting was called to order by Chair McQuivey at 10:05 am. As council members introduced themselves, Yanos recorded those that were present. The majority of the members were present and quorum was established. Cy Bridges, Analu Josephides, and Andrew Keliikoa were excused from today's meeting.

II. INTRODUCTION OF SHPD STAFF

SHPD staff introduced themselves. McKeague said a pule.

III. OPENING REMARKS

Chair McQuivey acknowledged the passing of Auntie La France Kapaka-Arboleda, chair of the Kauai Island Burial Council. Chair informed the council that Chang sent a condolence card to Auntie La France's family on behalf of the OIBC.

McQuivey reminded the public that the council has established a four-minute time limit on oral testimony to the council and that all remarks should be addressed to the council. Staff will indicate to Chair when the speaker has approached the three-minute mark; at that time, the Chair will ask the speaker to wrap it up.

(Kanemoto enters at 10:12 am.)

Since the conflict-of-interest issue has come up before, Chair McQuivey consulted with an attorney from the Hawaii State Ethics Commission, who referred him to the *Ethics Guide for Elected Officials, Employees, Members of Boards and Commissions*. McQuivey directed the council's attention to his April 4, 2006 memo that he sent to OIBC members. McQuivey read from his memo the section on "Disqualification" and "Financial Interest". He added that in the guide, it states that if there is a conflict of interest, a council member "cannot participate in any official action". The guide does not state that the member in question has to leave the room. If any member has any concerns about an item to be discussed, they should call the Chair, Deputy Attorney General, or the State Ethics Commission for clarification.

IV. APPROVAL OF MARCH 8, 2006 MEETING MINUTES

No changes were made to the minutes.

Motion to approve the March 8, 2006 OIBC Meeting Minutes was made and seconded. (Ehrhorn/Paik)

VOTE: ALL IN FAVOR. Motion carries.

V. COUNCIL ACTIONS

A. Burial Treatment Plan for the former Waikiki 3 Theatre Parcel in the Waikiki Ahupuaa, Kona District, Island of Oahu [TMK: (1) 2-6-022:009]

Doug Borthwick from Cultural Surveys Hawaii and Bill Brizee updated the council on the design of the reinterment site for the iwi on this project. Brizee stated that after the last OIBC meeting, he met with the City and County Department of Planning and Permitting (DPP). After much discussion, DPP agreed not to require the benches. DPP asked that the planter be enlarged and suggested some plant material (pohoe hoe and 'akia). Abad asked why akia was recommended for the landscape. Brizee stated that it was suggested by DPP. Abad stated that DPP probably suggested the 'akia for its heartiness, but Tiffany added that DPP probably did not know that the 'akia has a strong, unpleasant odor. Abad suggested pohinahina be used instead of the 'akia.

Motion was made and seconded to recommend that the iwi be preserved in place. (Ehrhorn/Kruse)

VOTE: ALL IN FAVOR. Motion carries.

Motion to recommend acceptance of the burial treatment plan with the proposed changes in the plant material as suggested by the council was made and seconded. (McKeague/Paik)

VOTE: ALL IN FAVOR. Motion carries.

**B. Recognition of Lineal/Cultural Descendants Claim
Burial Treatment Plan for the former Waikiki 3 Theatre Parcel in the Waikiki Ahupuaa, Kona District, Island of Oahu [TMK: (1) 2-6-022:009]**

Chang referred the council to her March 29, 2006 memo that was included in the packet that was sent to the council members. The applicants were Clarence A. Medeiros, Jr.; Karen K. Medeiros; Lincoln K. Medeiros; Jacob L. Medeiros; Jaimison K. Medeiros; and Jayla A. Medeiros. Because Clarence Medeiros was previously recognized by the OIBC on May 10, 2000, for another set of iwi that was found on same TMK as this project, the Department recommends approval of recognition as cultural descendants to the remains found on the former Waikiki 3 Theatre Parcel.

Greenwood asked for clarification on the applicants' relation to each other. Chang explained that Karen and Jacob are Clarence's children; Lincoln is Karen's child; Jamison and Jayla are Jacob's children.

**Motion to accept the staff's recommendation was made and seconded.
(Ehrhorn/Paik)**

VOTE: ALL IN FAVOR. Motion carries.

C. Discussion on Council Direction, Goals and Objectives

Chair McQuivey wanted to update the council in the effort to contact landowners to facilitate the process of identifying land that might be used for burial sites. Tiffany reported that she attempted to contact a representative from Campbell Estates twice but has not been able to make contact. Chair McQuivey encouraged the council members to continue to think about landowners who might be willing to set aside parcels for iwi reinterrment. Abad stated that she would like more information so she can approach Kamehameha Schools about the possibility there. Chair McQuivey asked Tiffany how she approached Campbell Estates. Tiffany stated that there is already a site on Campbell Estates that some iwi were already buried. Tiffany explained to Campbell Estates that there are some iwi that were gathered from the area and asked if there was space available in the current site to add these iwi. She also asked if they could help financially (to open the vault and prepare to put the iwi in).

Chang requested that council members ask willing landowners to contact Chang so she can give them general information that the landowner would want or to answer any questions they may have. Abad stated that some of the questions landowners would have would be:

1. How many?
2. Where did they derive?
3. What other involvement might there be from other parties?

Paik added that another question landowners would have is "Would these cultural or lineal descendants have right of way over their private property and what are the liability issues?"

Chair McQuivey restated that council members could act as "nets" to gather as much information as possible in contacts, whether the land is some place we could use or not, if we have those discussions, it would help.

However, Abad stated that information be provided to the council members so when they make their contacts, they would be able to answer some of the landowners' questions.

Greenwood stated that she would prefer that SHPD speak to the landowner she has been in contact with because when she mentioned the matter to the landowners, they initially seemed interested; but when it came time to discuss the issue, Greenwood would get no response from the landowners.

Kruse mentioned that she has been in contact with Eric Masutomi from Outrigger since they are involved with the reinterment in Waikiki. Kruse stated that she mentioned to Mr. Masutomi that some council members visited SHPD's iwi room and saw that there are a lot of iwi that should be reinterred. Kruse asked Mr. Masutomi if Outrigger would consider adding some of those iwi in the reburial at Waikiki. Mr. Masutomi's only question was how many iwi is involved, because as this project is, the reburial area is very small and may not be able to accommodate any more remains. Kruse said she would follow up on her discussion.

Abad asked the council if they would be interested in a briefing on the Kuilima Turtle Bay development. She stated that this is expected to be an enormous project where they would encounter areas that are likely to have burials. McKeague stated that a briefing is a good idea because he understands that this project is based on a plan that is, in McKeague's opinion, antiquated. He added that whatever archaeological study was done of the area predates State burial laws. Given the known natural and cultural landscape of that area, the council should support an initiative to make sure that study is updated and all concerns are addressed.

Abad added that the department may want to invite OHA to attend this briefing also, because they have entered a memorandum of agreement. She stated that she is not sure if it is a valid memorandum of agreement because it may predate applicable laws. Abad stated that this project's situation is urgent because developers only need to obtain their grading and grubbing permit and subdivision approval. Monahan suggested that the council put an informational update for this project on next month's agenda and he will brief the council because he has already seen a report for that project. Chair McQuivey asked staff to add this project to next month's agenda and to invite the developer also. Abad also suggested that Paul Rosendahl, who conducted the archaeological subsurface reconnaissance survey report, be invited as well.

D. Discussion of the Department's collection of 'iwi

(Mahi enters at 10:48 am)

McKeague reported that there was a brief meeting between staff and Chair and Vice-Chair where they discussed status of the inventory of the 'iwi in storage at SHPD's office. McKeague informed the council that not only is staff working on the inventory of 'iwi for all their island offices, but staff is also trying to get an idea of what is temporarily curated at private archaeological firms. McKeague added that this is an immense task and acknowledged that some needed information might be missing, and

since manpower is limited at SHPD, suggested that council members spend one or two days a month to help get the information compiled. McKeague also noted that some key agencies may have a role in the interest of the Hawaiian community, specifically OHA, and asked if there was a role for the council to play to help nurture and/or strengthen the relationship between SHPD and OHA. McKeague felt that the council could have a role in that and informed the members that he and Chair McQuivey will be meeting with SHPD Administrator Chinen in the next couple of weeks to discuss what SHPD's needs are and to identify what the council's specific roles are and perhaps to see if OHA can play in a specific role and possibly have a meeting with all the parties. McQuivey added that the meeting with Chinen has been scheduled for April 25, 2006.

Paik asked if the burial registration form, when ready, will be available on-line. Chang stated that the form will be available on-line and also added that the Descendancy Claim Application form and the Island Burial Council Candidacy Application are already available on-line.

E. Status Update on Wal-Mart case

Chair McQuivey informed the council that a hearings officer has been chosen. Chair McQuivey reminded the members that comments are due in a couple of weeks as stated in the notice to provide comments that they received. McQuivey noted that the list of addresses included with the notice was outdated, so he asked staff to provide a copy of the current list to the person who is handling the case.

F. Status Update on Section 106/NAGPRA Correspondence

(Diamond enters at 11:03 am.)

Greenwood stated that according to Section 106 regulations, parties have 30 calendar days from the date received in SHPD to submit comments.

Greenwood updated the council on the Section 106/NAGPRA correspondences that she received according to her report, which she distributed to members at the beginning of the meeting. During her update, Greenwood mentioned that she consulted with OHA on some of these projects.

The council discussed the correspondence regarding the proposed MOUT training, which was dated March 9, 2006. Kini, who has visited the site of the proposed MOUT training, stated that MOUT stands for Military Operations on Urban Terrain. Kini explained that on a MOUT training area, the military uses empty shipping containers that have been set up as building structures to train personnel to move from room to room. Kini stated that the proposed training facility would be approximately three acres

on a bluff overlooking the beach area. Kini pointed out that the Mokapu burial area lines stretched along the beach and cut across the proposed MOUT training facility.

Greenwood spoke to Jesse Yorck of OHA, and he informed her that the proposed location of the MOUT is just 250 yards away from the burial site. Greenwood stated that OHA had considered recommending a fence to be erected to separate the MOUT from the burial site; but she pointed out that they might find more burials after they put up the fence. Greenwood suggested that the council write to the Base Commanding General to request a discussion about the 'iwi. Greenwood stated that OHA had initially approved the project, but after her conversation with Mr. Yorck, they decided to withdraw and send a withdrawal letter.

Diamond noted that one of the claimants of this project is the OIBC. Diamond recommended that the council make a determination based on the information from the district representative; or the council can put this item on the agenda for the next meeting and invite all the claimants to give their manao, and then make an assessment. Diamond stated that since 'iwi has previously been found in that area, he does not want the MOUT located there. He also added that the Marines had started another project before consulting with the claimants.

Monahan informed the council that he reviewed the MOUT proposal from the Marine Corps, which basically said, "no effect". Monahan wrote a letter to the Marine Corps informing them of the cultural sensitivity of the area, and they should, at least, conduct some monitoring even if they think they are outside the burial area because the boundaries are arbitrarily defined. Monahan added that he spoke to June Cleghorn a while after he sent his letter, and she stated that they were going to move the whole project to an inland area of Bellows, which he was happy to hear. However, he recently spoke to Sherry Lion-Grounds (a colleague of June Cleghorn) that they have not necessarily moved the project, but they are still considering both places for the MOUT training facility.

A motion was made and seconded to add this item to next meeting's agenda and to invite June Cleghorn and interested claimants to provide manao to the council. (Diamond/Greenwood)

Abad recommended that the council notify the Marine Corps that this case requires them to consult the OIBC and all other claimants and to also inform them that they cannot proceed without these consultations. Diamond suggested that the council ask the Marine Corp to provide information on what other locations they have considered in the past and what locations they are currently considering for the MOUT project.

Chair McQuivey asked that the motion be restated.

The motion was made for council to invite the claimants and the Marine Corp to the next council meeting and request the Marine Corp to brief the council on the

MOUT facility. (Diamond/Abad)

Chair McQuivey asked if that request should be made as the council's status as claimant or as the OIBC. Diamond stated that it should be made as a claimant pursuant to 106. Abad added that it should be made as a known claimant in regards to previous cases, but also as an interested party in this new 106 undertaking.

Paik expressed her concern that Diamond's motion does not address Greenwood's recommendation to inform the Marine Corp that the council will not take any action on their project because the council has some concerns with the other. Paik asked if there should be two motions.

Kini summarized the discussion stating that there is the issue of the 1,500 sets of remains that have not been reinterred, which Greenwood feels should be dealt with before this new proposed MOUT training facility is considered. However, Diamond felt that the reinterment issue should be dealt with separately. If the council confuses the 106 with the reinterment, the council will get into trouble. For this current project, the council should focus on the 106 issue – the council needs to be formally consulted. If the project is approved, Diamond stated that the council will want to be in the position to preclude certain items to protect as much as we can.

McKeague inquired whether Section 106 is concurrent with the NHPA review, because under NHPA, once a notice of intent is published, there is a thirty day review period and the scoping process is initiated. Monahan stated that the document he reviewed was a Section 106.

Abad suggested that the council may want to approach the idea to establish a programmatic agreement with Kaneohe Marine Corp Air Station, so they can proceed cautiously in future projects where there are known burials in the area. The Marine Corp has undertaken numerous projects in the past where they work as if there are no known burials in that area, and they often do not trigger the consultation process until they encounter a burial site. She stated that the Marine Corp is aware that this area has burial sites, but this MOUT proposal seems to suggest they are continuing in that pattern. She felt that a programmatic agreement will address that pattern of behavior of the Marine Corp.

Abad added that another reason a programmatic agreement may be a good idea is because the commanders are constantly changing. She explained that with a programmatic agreement, there would be that set of processes in place for them to follow regardless of the change in command.

VOTE: ALL IN FAVOR. Motion carries.

McQuivey asked staff to provide the council with any correspondence regarding this matter for the next meeting. Chang indicated that she had not seen any correspondence regarding Mokapu in the office. McQuivey then asked staff to request that the Marine Corp bring relevant correspondence when they come to brief the council.

Mahi asked if the military is required by law to notify the claimants. He asked if the council could send an advisory letter to inform the Marines that they had not notified the claimants, as required by law. However, Abad stated that Section 106 process is vague and that a programmatic agreement could be more defining in terms of when a consultation should occur; with whom they must consult; etc.

Greenwood drafted a sample form for native Hawaiian organizations to submit to the OIBC in order to be included in the list of appropriate Hawaiian organizations that the OIBC is responsible for maintaining. This form was also included in the packet that was sent to the members. Greenwood stated that this form is a work-in-progress, and it will be revised. She added that since a list of appropriate Hawaiian organization is one of the council's goals, the council should consider doing something like this.

Tiffany referred the council on Item 2 on Page 2 of the form, where it asks for documentation or experience and background in beliefs and practices, she asked if the applicants have to show it on the application. Greenwood explained that applicants should give a general background to help the council determine their appropriateness. Since the council would be recommending the applicants, the council will be liable for their decision.

Paik commented that although the application lists the criteria, it does not state how one would qualify nor does it ask for applicants' qualifications. Council discussed what law to use to determine "appropriate Hawaiian organizations". There was an argument regarding the fact that the rules just state that the OIBC "maintains a list". McQuivey also pointed out that that the rules also states "appropriate" and then there's the question of who deems an organization as "appropriate".

McQuivey asked Greenwood to be the lead on this project and asked council members to give their comments to her. He asked her to develop the form further and report to the council at the next meeting.

Chair McQuivey called for a recess at 12:00 pm. The meeting resumed at 12:15 pm.

VI. SHPD INADVERTENT DISCOVERY REPORT

Chang referred the members to the monthly summary report of inadvertent discoveries of human skeletal remains, which was previously provided to the members in their packets. She read into the record the contents of her March 29, 2006 memo to the council.

VII. ANNOUNCEMENTS

A. Board of Water Supply Informational Update on North Kalaheo Avenue Waterline Replacement Project [TMK: 4-2-001, 002, 019, 020; 4-4-022 through 032; 4-4-011]

Alani Apio, from the Board of Water Supply (BWS), and Doug Borthwick, from Cultural Surveys Hawaii (CSH), gave an informational update on this project. BWS has asked CSH to give their best recommendations to continue with this project. CSH recommended that they do proactive testing in the area. Borthwick stated that BWS is putting in a water line from about Aikahi Park to the North Kalaheo section. CSH is working off the idea to dig prior to construction on-site. Chris Monahan from SHPD will be making a site visit after the meeting today. BWS has identified Kanaka 'Oiwi in the area to update them on all the plans about the proactive trenching and they have received good feedback from them as a result.

Abad asked CSH what the sampling design is for this project. Borthwick stated that there is a route of where they want the line to go and then there would be a combination of different things such as having an archaeologist checking the levels when they are digging deeper and identifying sensitive areas as they go. Abad asked if there will be hand excavation going on in front of the machinery. Borthwick replied by saying that there will be hand digging along the root.

Informational presentation on the Victoria Ward Village Shops Project Waikiki Ahupuaa, Kona District, Island of Oahu [TMK: 2-3-5: 13-17, 22-23]

Jeff Dinsmore, Vice-President of Development for General Growth Properties, gave an informational presentation on this project. This project encompasses the area next to Ward Center that borders along Auahi, Kamake'e, and Queen Streets. Dinsmore stated that there were 5 burials found under Swirl and CSH is continuing to conduct an inventory survey. Whole Foods, a mainland grocery store, will be occupying part of the space on this property. McQuivey asked how many acres this project covers. Dinsmore replied by saying that the project is about 6 acres. Paik asked about the present condition of the burials found on the project. Dinsmore stated that at that point of time, the burials have not been moved and remain in place.

Matt McDermott, of CSH, said that the archaeology of this project was very interesting. If you were to cut the project in half, the mauka side was much lower land which had salt marshes and fishponds, and the makai side was higher land which had active beach berm. All the burials were found in the beach burn and some of the burials were found associated with a cultural layer which is unique to the Kakaako area. It appears that all the burials were found in a flex position which highly suggests that these burials are Native Hawaiian.

Kruse asked what is happening to the 'iwi now. Dinsmore said that the burials have been left undisturbed and barricades were put around them to provide protection. Abad asked CSH about where they are in regards to the next steps in this process. McDermott stated that all the field work/inventory survey is done and the results are being written into a report right now and will be turned into SHPD very soon. There is an archaeological monitoring plan in place that has been already approved by SHPD. Paik shared her concern about finding more burials in this project area considering that a significant amount of burials have already been identified.

(Tiffany left the meeting at 12:35 pm)

Abad asked CSH to explain why there are large areas on the property that haven't been tested. McDermott stated that they were using a sampling strategy because of this type of urban inventory survey in Kakaako, a typical number would be 6-10 trenches per acre and CSH did 12-13 trenches. Abad shared her concern for the large areas that haven't been tested. McDermott said that they could go back in and do a little more testing. McDermott showed the council the different areas where trenching had been completed.

VIII. ADJOURNMENT

The meeting was adjourned at 12:45 pm.

Respectfully submitted,

Susan P. Yanos, SHPD Secretary and
Piilani Chang, SHPD Oahu Cultural Historian